BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Investigation on the Commission's own motion into the rates, operations, practices, services and facilities of San Diego Gas & Electric Company and Southern California Gas Company.	I.07-02-013 (Filed February 15, 2007)

COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE LONG AND THE ALTERNATE PROPOSED DECISION OF COMMISSIONER BOHN

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June 27, 2008

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Commission Decisions

California Statutes

Constitutions

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U902M) for authority to update its gas and electric revenue requirement and base rates effective on January 1, 2008.	A. 06-12-009 (Filed December 8, 2006)
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I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Division of Ratepayer Advocates (DRA) submits these Comments to the Proposed Decision (PD) of Administrative Law Judge Long, and the Alternate Proposed Decision (APD) of Commissioner Bohn to identify legal and factual errors. Silence on any subject not specifically addressed in these Comments should not be construed as agreement or disagreement.

The PD and APD adopt the following Settlements to which DRA is a signatory: the Test Year 2008 Settlement for San Diego Gas & Electric Company (SDG&E) with the Division of Ratepayer Advocates (DRA); Test Year 2008 Settlement for Southern California Gas Company (SoCalGas), with DRA and The Utility Reform Network (TURN); Post Test Year Ratemaking Settlement for SDG&E with DRA, TURN and the Aglet Consumer Alliance (Aglet); Post Test Year Ratemaking Settlement for SoCalGas with DRA, TURN, and Aglet.

As the APD notes, the above Settlements are based on a considerable evidentiary record which was thoroughly reviewed by all signatories; they are reasonable in light of that record, consistent with the law and in the public interest.[1] The APD would adopt all the Settlements without modification. The PD would make a change to the Post-Test Year Settlements placing a 150 basis point cap on excess earnings. As the signing parties noted in their Motions for Adoption of Settlements, all of the Settlements embody compromises of all of the signatories' positions, and, thus, all of the terms are interdependent. DRA therefore recommends that the APD's adoption of the Settlements without modification be the course the Commission follows.

The PD and APD appear to be identical in all other respects except the effective date for the change in revenue requirement. The APD would have rates effective January 1, 2008. The PD adopts an effective date of February 1, 2008 because of delays caused by the Sempra Utilities in connection with various measures referred to as the Utility of the Future. For the reasons set forth in DRA's previously filed comments on this issue, DRA recommends the effective date of February 1, 2008 in the PD.

While the PD and APD accept the above Settlements, the PD and APD then include "strictures" and commentary directing DRA and /or other intervenors ***not*** to make certain arguments in future proceedings. These strictures and commentary violate the United States and California Constitutions as well as Public Utilities Code Section 1708 and should be removed from the final decision in this matter.

[1] APD, pp. 14-16.

The PD and APD also include factual errors which should be corrected in the final decision. One such factual error is in the rationale given for setting a four-year rate case cycle for the Sempra Utilities. The Commission should correct that error and adopt a five-year cycle, based on the record and the stated objectives of the PD and APD, so that the Sempra Utilities' next General Rate Case (GRC) application is for a 2013 Test Year. Other factual errors are discussed below.

II. LEGAL AND FACTUAL ERRORS RELATING TO RESOLVED REVENUE REQUIREMENT ISSUES

Section 5.2 of the PD and APD is entitled, "Unresolved Test Year Issues," and lists some of the issues disputed by parties in the Sempra Utilities' rate cases. This list includes depreciation expense, funding for incentive compensation, and Working Cash expense.

Although the PD and APD term these issues "unresolved," the Settlement Agreements between the Sempra Utilities and DRA and, TURN, in the case of the SoCalGas revenue requirement, leave none of these *revenue requirement* issues outstanding. Yet, despite the fact that the PD and APD adopt the revenue requirement Settlements, they both include comments that purport, "as a matter of policy," to "resolve these litigated disputes to provide both guidance and *strictures* for the next proceeding."[2]

The strictures, if adopted, would violate the U.S. and the California Constitutions by impermissibly attempting to stifle freedom of speech and the rights of citizens and groups to petition the government. The commentary, if adopted, would violate Public Utilities Code Section 1708 by impermissibly attempting to bind future Commissions and would be unenforceable.

DRA, therefore, recommends that the sections of the PD and APD which include strictures relating to depreciation expense, incentive compensation, and Working Cash, and the commentary relating to what DRA and other intervenors should *not* present as testimony in future proceedings be deleted. Inclusion of these strictures and commentary in a final decision would be reversible legal error.

[2] Section 5.2, p. 18, emphasis added.

A. The PD's and APD's Proposed Strictures and Commentary Relating to Depreciation Testimony in Future Proceedings Violate the U.S. Constitution, the California Constitution and the California Public Utilities Code

One issue the PD and APD list as an "unresolved test year issue," is "whether or not, as a matter of policy, the CPUC should consider the proposals raised by TURN (with respect to SoCalGas only) or DRA related to the calculation of SoCalGas or SDG&E depreciation expense."[3] As noted above, the Settlement Agreements resolve the revenue requirement for depreciation expense.[4]

Although the PD and APD adopt the Settlement Agreements, they include an incomplete and inaccurate discussion of some of the parties' positions on depreciation, and then go on to state:

> We therefore deny with prejudice the recommendations of DRA, TURN and UCAN on depreciation and net salvage. The purpose of this denial is to avoid an unnecessary repetition in subsequent proceedings.

This directive, if adopted, would violate the United States (U.S.) Constitution, the California Constitution, and the California Public Utilities Code. Inclusion of this provision in a final Commission decision would be reversible legal error and DRA recommends that it, and the entire discussion relating to it, be removed.

The Constitutional violations of these strictures are irrefutable. To begin with, the First Amendment to the U.S. Constitution provides that:

> Congress shall make no law ..abridging the freedom of speech, .. or the right of the people .. to petition the Government for a redress of grievances."[5]

The First Amendment is applied to the states by the Fourteenth Amendment which provides that:

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[3] Section 5.2, (c) PD, p. 19, APD, p. 18.

[4] Settlement for SoCalGas, p. 10; Settlement for SDG&E, p. 10.

[5] U.S. Const., 1st Amend.

> No state shall make or enforce any law which shall abridge the privileges and immunities of the citizens of the United States.[6]

The California Constitution similarly provides that:

> Every person may freely speak, write and publish his or her sentiments on all subjects... A law may not restrain or abridge liberty of speech..."[7]

The California Constitution also provides that:

> The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.[8]

The U.S. Supreme Court and California courts have interpreted these Constitutional provisions to apply to administrative agencies. As the U.S. Supreme Court has held:

> The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms.... The same philosophy governs *the approach of citizens or groups of them to administrative agencies* (which are both creatures of the legislature and arms of the executive) and to courts, the third branch of Government. *Certainly the right to petition extends to all departments of the Government*.[9]

California courts have likewise held that:

> ... the right of petition ... includes acts designed to influence public opinion concerning an issue before a legislative or administrative body and it has been described as "an assurance of a particular freedom of expression.... In this general sense, *the right of petition embraces such activities as* complaint letters to government agencies, *testimony before*

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[6] U.S. Const., 14th Amend.

[7] Cal. Const., art. I, § 2.

[8] Cal. Const. art. I, §3.

[9] California Motor Transport Co et al. v. Trucking Unlimited et al (1972) 404 U.S. 508, 510; 92 S.Ct. 609, italics added.

government agencies, publicity campaigns, and other forms of protest.[10]

If a branch of government seeks to restrict freedom of speech or invade the right to petition, then that governmental entity bears the burden of proving the constitutionality of its actions. In fact, as a recent California case has held, government attempts to restrict speech based on its content, are presumptively invalid.[11]

The U.S. and California Constitutions guarantee citizens and groups the right to use "... the channels and procedures of state and federal agencies and courts to advocate their causes."[12] Despite this, the PD and APD would single out DRA, TURN and UCAN to "deny with prejudice" their rights to petition this agency in testimony in future proceedings solely based on the content of their testimony in this proceeding.

Apart from the fact that the Commission cannot, for Constitutional reasons, legally bar DRA, TURN or UCAN, from presenting depreciation proposals in GRCs, the Public Utilities Code also prohibits this Commission from attempting to bind future Commissions as the PD and APD attempt here.

Public Utilities Code Section 1708 provides that, with proper notice and an opportunity to be heard, a future Commission may rescind, alter or amend previous decisions. As the Commission itself has noted, Section 1708 prevents any Commission from binding future Commissions.[13] Thus, the Commission has found that it "…cannot make blanket pronouncements that are binding upon future Commissions,"[14] and that, in fact, that "it would be misleading," to suggest that one Commission has the ability to bind future Commissions.[15]

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[10] Zhao v. Wong (1996) 48 Cal. App. 4th 1114, 1122-1123, emphasis added.

[11] U.D. Registry v. State of California (2006) 144 Cal App 4th 405, 418.

[12] 404 U.S. 508, 511; 92 S.Ct. 609.

[13] See, e.g. Application of PG&E (2004) D.04-05-055, Section 7.5, p. 42; 2004 Cal. PUC LEXIS 254 *59; In the Matter of the Fruitridge Vista Water Company (Application for Rehearing) (2006) D.06-09-040, p. 3.

[14] Order Instituting Rulemaking to Consider Refinements to and Further Development of the Commission's Resource Adequacy Requirements Program (2006) D. 06-07-031, p. 23.

[15] Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships

(continued on next page)

Clearly, attempts to restrict what DRA and other parties say in future proceedings violate the U.S. Constitution, the California Constitution, and the Public Utilities Code. Nor should the Commission want to impose such blanket restrictions. As times change, and priorities shift, this Commission, and its successors, should welcome the free exchange of views and ideas.

For example, in this case, DRA's testimony on depreciation and net salvage was based on the same traditional methodology used by the Sempra Utilities. DRA's proposals, however, also incorporated the Commission's statements in a 2000 decision cautioning against using a "mechanistic" approach to depreciation "...not effectively tempered by judgment."[16] Thus, DRA removed certain anomalous years from its analysis, a method of forecasting the Commission has accepted in the past.[17] DRA's testimony on depreciation and net salvage was intended to present the Commission with a way to allow the Sempra Utilities to collect sufficient revenue to pre-fund the cost of removal while, at the same time, mitigating the effect of rising costs on current Sempra ratepayers.[18]

In the end, however, the Sempra Utilities and DRA settled on a revenue requirement amount for the depreciation and net salvage issues. Since the PD and APD accept that part of the Settlement, there is no depreciation issue pending before the Commission in this case. Thus, the attack on the Constitutional rights of DRA, TURN and UCAN is as unnecessary as it is unlawful.

DRA recommends that the final decision remove Sections 5.2.4, and 5.2.4.1 entirely.

(continued from previous page)
Between Energy Utilities and their Affiliates Adopted By the Commission in Decision 97-12-088 (1998) 84 CPUC 2d 155, 177; D. 98-12-075.

[16] Application of Pacific Gas & Electric Company, (2000) D.00-02-046, p. 360.

[17] *See, e.g.,* Application of Southern California Edison Company (2006) D.06-05-015, p. 209.

[18] *See* Ex. DRA-20, pp. 20-27 – 20-28.

B. The PD's and APD's Commentary on Funding for Incentive Compensation Plans Contains Factual Errors and Violates the U.S. Constitution, the California Constitution and Public Utilities Code Section 1708

The PD and APD include as another "unresolved test year issue" "[w]hether or not, as a matter of policy, the CPUC should assign Sempra Energy shareholders with responsibility for funding SoCalGas or SDG&E incentive compensation plans."[19] As noted above, since the PD and APD adopt the Settlement Agreements, which include funding for the SoCalGas and SDG&E incentive compensation plans, the revenue requirement for funding compensation is not in dispute.

Nonetheless, the PD and APD include commentary on this resolved issue that is based on factual error, and conclude with pronouncements that are legal error. DRA recommends that this entire section be removed from the final decision.

The factual errors are in the PD's and APD's summary of DRA's position. The PD and APD state that "DRA's argument [is] that shareholders should fund the incentive portion of market-based employee compensation."[20] This is incorrect. DRA's position on incentive compensation, as set forth in its testimony, was that ratepayers fund 50% of the Sempra Utilities' Incentive Compensation program since, by its terms, a primary aspect of the program is to achieve Corporate Financial goals. DRA's position on the Sempra Utilities' Long-Term Incentive programs was that these stock options be funded entirely by shareholders since they benefit only a small group of the Utilities' most highly paid employees.[21]

The PD and APD conclude that, "[b]ecause total compensation is reasonable, (defined as prevailing market rates for comparable skills) the ratepayers should reasonably fund a revenue requirement that includes the full market-based employee

[19] Section 5.2, PD, p. 18, APD, p. 18.

[20] Section 5.2,3 PD, p. 21, APD, p. 21.

[21] DRA-35, pp. 35-35 – 35-37; DRA-14, pp. 14-37 – 14-40.

compensation for adopted levels of staff."[22] This conclusion is legal error for numerous reasons.

First, even if this issue were still unresolved, merely because a consulting firm finds the Sempra Utilities' total compensation is statistically "at market" does not discharge the Commission from its responsibility to find that including all portions of compensation in rates is "just and reasonable." Since the PD and APD do not develop the issue or place it in a factual context, there is no basis for the conclusion. In any case, the Commission decision in SCE's last GRC held that some executive compensation costs should be assigned to shareholders.[23]

As discussed above, the Commission cannot, for constitutional reasons, legally restrict the freedom of speech or the right to petition of DRA, or any other party, to present relevant testimony on incentive compensation proposals in GRCs. Since there is no disputed issue as to the funding of incentive compensation left to resolve in this case, inclusion of this commentary as strictures and guidance for DRA or other parties, or as a directive for future Commissions in future proceedings violates the U.S. Constitution, the California Constitution, and Public Utilities Code Section 1708.

Section 5.2.3 should be removed entirely from the final decision in this matter.

C. The PD's and APD's Commentary on Working Cash Violates the U.S. Constitution, the California Constitution and Public Utilities Code Section 1708

The PD and APD include Working Cash in the list of "unresolved test year issues" which "..it behooves us to resolve … to provide both guidance and strictures for the next proceeding."[24] The PD and APD include commentary about DRA's recommendation to remove working cash amounts sought by the Sempra Utilities because these were not required for minimum bank deposits. The PD and APD state that "...DRA offers no

[22] Section 5.2.3., PD, p. 21, APD, p. 21.

[23] *See e.g.* Application of Southern California Edison Company (2006) D.06-05-016, p. 144.

[24] Section 5.2, PD, p. 18, APD, p. 22.

Commission decisions which make the narrow interpretation it proposed here."[25] DRA did not include the citation in its brief, but notes that the Commission, in the TY 2006 SCE GRC, adopted a zero cash balance.[26]

Again, since the Settlement Agreements resolve the revenue requirement for Working Cash, there no disputed issue as to Working Cash left outstanding. As discussed above, the Commission cannot, for Constitutional reasons, legally restrict the freedom of speech or right to petition of DRA, or any other party, to present relevant testimony on Working Cash proposals in GRCs. Since there is no disputed issue as to Working Cash left to resolve in this case, inclusion of this commentary as strictures and guidance for DRA or other parties, or as a directive for future Commissions violates the U.S. Constitution, the California Constitution, and Public Utilities Code Section 1708.

Section 5.2.5 should be removed entirely from the final decision in this matter.

III. LEGAL AND FACTUAL ERRORS RELATING TO THE ADOPTION OF A FOUR-YEAR RATE CYCLE

A. Adoption of A Four-Year Rate Cycle Is Not Supported by the Record

In its discussion, both the PD and the APD say that, "[b]ecause of the burden of these GRCs on all parties we prefer to avoid overlapping proceedings and 2010 is too close upon us."[27] Finding of Fact 31 states: "A four-year cycle is the earliest reasonable interval to schedule a general rate case with a Test Year 2012 without overlapping rate cases with either PG&E or SCE." Finding of Fact 31 is factually incorrect.

As of this writing, evidentiary hearings for SCE's Test Year 2009 GRC have just concluded. SCE's TY 2009 GRC Application includes two post-test years, 2010 and 2011. No party to the current SCE GRC is proposing any additional post test years. Unless the Commission decides to add an additional test year on its own initiative, SCE's next GRC will be for a TY 2012. Thus, adopting a four-year cycle (TY 2008 and

[25] Section 5.2.5, PD, p. 27, APD, p27.

[26] D.06-05-016, Appendix C, p. C-23, line 1.

[27] Section 7.4, Duration of the Post Test Year Cycle, PD, p. 38; APD, p. 39.

attrition years 2009 – 2011) in this proceeding for the Sempra Utilities' will result in an overlap with SCE.[28] Adopting a five year cycle (2008 – 2012) in this GRC, with a TY of ***2013*** for the Sempra Utilities next GRCis the earliest year that would not "double-up" major rate cases.

B. Finding of Fact 4 Is Not Supported by the Record

Both the PD and APD include as a Finding of Fact, the statement that: "The 2012 test year GRC will be less complex and not require significant adjustments of data if it is filed based on the existing accounting system used by SDG&E and SoCalGas for daily control of operations and planning, e.g., cost center control accounts."[29] This Finding of Fact should be deleted from the final decision as legal error since there is no evidence to support it.

Ordering the Sempra Utilities to use cost centers for their next GRC application is no guarantee that the next Sempra GRC *will* be less complex. In fact, according to the Sempra Utilities' Opening Brief:

> ... the negatives associated with the use of cost center level data in the GRC are many. By far the biggest negative associated with cost centers vs. FERC accounts in the GRC is that FERC accounts tend to be relatively stable at the GRC presentation level while cost centers can be created or abandoned, or change status from shared to non-shared on a monthly basis. Trying to achieve data consistency over time would require a constant mapping process for all changes – which would be incredibly difficult to manage and maintain, if it is even possible. So, if the goal is to limit the number of adjustments made to historical data, then switching to cost centers would multiply the problem many times.[30]

[28] See DRA-25 (Post-Test Year Ratemaking), p. 25-22.

[29] Finding of Fact 4, PD, p. 86; APD, p. 84.

[30] Sempra Opening Brief, p. 368, lines 29-35, p. 369, lines 1-2.

Thus, according to the Sempra Utilities, "[p]resentation of the GRC at the cost center level will also not reduce any complexity of data adjustment or presentation, and may actually increase that complexity."[31]

The complexity of any given GRC has more to do with the quality and volume of an applicant's showing, not to mention the quantity of the increase requested, than it does with whether a utility presents its request in cost centers or FERC accounts. For DRA to live up to its legislative mandate to "represent and advocate on behalf of the interest of public utility customers," and to seek to obtain for ratepayers "…the lowest possible rate for service consistent with reliable and safe service levels"[32] is a significant undertaking in every GRC. Processing GRC applications for the two Sempra Utilities, whether they file one application or two, and whether they provide testimony in cost centers or by FERC account, will use essentially all available DRA staff resources dedicated to energy GRC cases. DRA does not have the authorized staffing levels to process another large energy company GRC simultaneously with a SoCalGas and SDG&E GRC filing.

Moreover, DRA notes that the revenue increases for the fourth attrition year in the Post-Test Year Settlement Agreements are comparable to the levels proposed for the prior three attrition years in the same Settlements. Therefore, the increase in the fourth attrition year is somewhat lower, on a percentage basis, than for those prior years and is a reasonable and modest 3% increase.

For all these reasons, to achieve its stated concern not to burden parties with overlapping proceedings, and to consider the "…cumulative impacts on other proceedings[33]," the Commission should correct the final decision in this matter to make ***2013*** the test year for the next Sempra GRCs.

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[31] Sempra Opening Brief, p. 369, lines 9-10.

[32] Public Utilities Code Section 309.5.

[33] Section 7.3.2, PD, p. 36, APD, p. 37.

IV. LEGAL AND FACTUAL ERRORS RELATING TO INCENTIVE MECHANISMS

A. The PD's and APD's Proposed Commentary Relating to DRA Testimony on Incentive Mechanisms in Future Proceedings Violates the U.S. Constitution, the California Constitution and the California Public Utilities Code

In their discussion of Incentive Mechanisms, the PD and APD both state:

> We clearly inform the parties herein when we see an unacceptable litigation position so that subsequent proceedings are not burdened with the same disputes. There are many possible alternatives for incentive mechanisms, including not incentives, but we find the unbalanced incentive proposals as litigated by DRA in this proceeding to be without merit, *and we strongly urge DRA to forego such recommendations in the future*.[34]

As discussed above, the Commission cannot, for Constitutional reasons, legally restrict the freedom of speech or the right to petition of DRA, or any other party, to present relevant testimony on incentive mechanism proposals in GRCs. In addition, to say that, because the PD and APD find DRA's position "unacceptable" in this GRC, "subsequent proceedings" should not be "burdened with the same disputes" is also a violation of Public Utilities Code Section 1708, which prohibits this Commission from attempting to bind future Commissions.

DRA recommends that the commentary which "strongly urge[s]" DRA to forego such recommendations in the future be removed.

B. The PD and APD Discussion of DRA's Evidence on Incentives Contains Factual Errors

The PD and APD state: "DRA and CCUE concur with ending MAIFI[35], which is consistent with DRA's antipathy to incentives generally."[36] This statement, at least as to DRA, is factual error.

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[34] Section 11.1, PD, p. 50, APD, p. 47, emphasis added.

[35] Momentary Average Interruption Frequency Index

[36] Section 14.6, PD, p. 69, APD, p. 66.

DRA's testimony, in fact, "...recommends that the Commission *reject* SDG&E's proposal to eliminate the MAIFI indicator."[37] As DRA details in its testimony, the MAIFI indicator, which tracks momentary electricity interruptions, is an important indicator and becoming more so with the increasing use of computers. In fact, PG&E warns its customers that, "[i]f you're working on your computer, a momentary interruption can lose your data."[38] DRA's testimony also noted that, in a 2004 report, Lawrence Berkeley Laboratory estimated the cost of momentary power interruptions to the U.S. economy at $52.3 billion, compared to a cost of $26.3 billion due to sustained interruptions. DRA's testimony also reported that Synapse Energy Economics, in a 1998 study prepared for the National Association of Regulatory Utility Commissioners, found that momentary outages "...may be the most objectionable power quality gap on many systems as well as one most easily measured."[39]

The final decision should be corrected to accurately represent DRA's testimony. DRA's testimony does not recommend "ending MAIFI."[40] Rather, DRA recommends a MAIFI target of 0.61 outages, the current five-year average, less a stretch factor of 0.01 outages with a deadband is +/- 0.02 outages.[41]

V. FACTUAL ERRORS RELATING TO THE USE OF RECORDED 2006 DATA

In their discussion of the appropriate recorded data to use in this GRC, the PD and APD state:

> However, we find that the 2006 data was not in a format compatible with the adjusted data for 2005 and prior years. We therefore agree with SDG&E and SoCalGas that it is unreasonable in this instance to use

[37] Ex. DRA-24, p. 24-17, emphasis added.

[38] Ex. DRA-24, p. 24-17.

[39] Ex. DRA-24, p. 24-18 citing "Understanding the Cost of Power Interruptions to U.S. Electricity Customers," Lawrence Berkeley Laboratory report prepared for the U.S. Department of Energy (2004), p. 27 and "Performance-Based Regulation in a Restructured Electric Industry", prepared by Synapse Energy Economics (1997) for the National Association of Regulatory Utility Commissioners, p. 48.

[40] Section 14.6, PD, p. 70. APD, p. 67.

[41] Ex. DRA-7, p. 24-19.

> unadjusted 2006-recorded data to substitute for the 2006 forecast based on adjusted 2005-recorded data because it is an inconsistent base for re-forecasting 2007 and 2008.[42]

These statements are factually incorrect. DRA's testimony on SDG&E's Electric Distribution Capital Expenditures, for example, included 2006 recorded data provided by SDG&E. DRA's witness on Electric Distribution Capital Expenditures was asked by the ALJ regarding the data:

> Q: Was there any need to adjust recorded 2006 data to put it on to the same footing of how data was presented by the company other than the use of recorded instead of forecast for 2006 capital expenditures?
>
> A: Well, I know that when we initially requested the 2006 data we went through several iterations in getting that recorded data to match the historical data and also put it on the same footing as the forecasted numbers because we wanted to make sure we were comparing apples to apples. And it did need several iterations, but we accomplished that at least as far as capital was concerned.[43]

The PD and APD should be corrected to reflect this record evidence.

The PD and APD also state:

> Neither DRA nor any other intervenor used 2006-recorded data for every instance of re-forecasting 2007 and deriving a different Test Year 2008. In fact, SDG&E and SoCalGas assert that the intervenors only used 2006-recorded data when the unadjusted 2006-recorded data was a lower amount than the applicants' forecast 2006. *No party rebutted this assertion.*[44]

If, by the sentence, "no party rebutted this assertion," the PD and APD are stating that "no party had *an opportunity to submit rebuttal testimony* showing that the assertions of SDG&E and SoCalGas were incorrect," then the PD and APD should be clarified

[42] PD, p. 8, APD, p. 8.

[43] 13 RT 1503, G. Wilson/ DRA.

[44] Section 3.1, PD, p. 8, APD, p. 8, emphasis added.

accordingly. If, however, the PD and APD are suggesting that *DRA agrees* that DRA only used unadjusted 2006 recorded data when it yielded a lower amount, then this statement is factual error and should either be removed or corrected.

For example, as is clearly shown in DRA's testimony on capital expenditures for SDG&E, roughly half of the 2006 recorded amounts DRA used were higher than the amounts originally forecasted by SDG&E.[45] Since the PD and APD adopt the revenue requirement Settlements, these factual errors do not affect the revenue requirement. Nonetheless, these errors mischaracterize the evidence. DRA recommends that this discussion either be removed from the final decision, or corrected to accurately reflect the record.

VI. CONCLUSION

For all the foregoing reasons, DRA recommends that its Comments above and its Proposed Findings of Fact in Appendix A be incorporated into the Commission's final decision in this matter.

Respectfully submitted,

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June 27, 2008

[45] Ex. DRA-07, p. 7-3, Table 7-1.

APPENDIX A

DRA's Proposed Findings of Fact to the Proposed Decision*

4. **Delete**

17. **Delete**

21. **Delete**

22. **Delete**

25. **Delete**

30. The post test year settlements **establish post-test year increases for the years 2009 – 2011. SDG&E, SoCalGas and DRA separately settled and agreed to establish a fourth post test year for 2012.**

31. A **five**-year cycle is the earliest reasonable interval to schedule a general rate case with a Test Year **2013** without overlapping rate cases with either PG&E or SCE.

34. **Delete**

Proposed Conclusions of Law

5. **Delete**

***** DRA's proposals are presented in **bold** type.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE LONG AND HE ALTERNATE PROPOSED DECISION OF COMMISSIONER BOHN** in **A.06-12-009, A.06-12-010 and I.07-02-013** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on June 27, 2008 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

N O T I C E

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